

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ESBIN & ALTER, LLP.

Plaintiff.

v.

PAUL ZAPPIER and ADVANCED TRADE
SETTLEMENT, LLC.

Defendants.

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Civ. Action No.
08-CV-0313 (SCR)(MDF)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

PATRICK J. BOYD, being duly sworn, deposes and says:

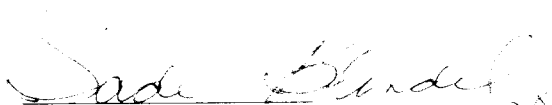
1. I am an attorney admitted to practice before this Court and the founder of The Boyd Law Group, PLLC.
2. I am counsel to Defendants Paul Zappier and Advanced Trade Settlement, LLC.
3. I make this Affidavit in support of Defendant Paul Zappier's Motion to Dismiss Claim 3 of Plaintiff's Complaint in this action pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim against Defendant.
4. The Affidavit of Defendant Paul Zappier, as previously provided to the court accompanying the letter dated February 6, 2008, is annexed hereto as Exhibit A in further support of Defendant's motion.
5. No prior request has been made for the relief sought herein.

By: 

Patrick J. Boyd

Dated: February 21, 2008

Sworn to before me this
21st day of February, 2008


Notary Public NY 144 2-21-08



EXHIBIT

A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ESBIN & ALTER, LLP,

Plaintiff,

-against-

PAUL ZAPPIER and ADVANCED TRADE
SETTLEMENT, LLC,

Defendants.

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X

Civ. Action No.

08 Civ. 0313

AFFIDAVIT of

Paul Zappier

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

PAUL ZAPPIER, being duly sworn, deposes and says:

1. I am a named defendant in this action and the founder of Advanced Trade Settlement, LLC (hereinafter "ATS").
2. I make this Affidavit in opposition to Plaintiff's Request for an Order to Show Cause made pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.
3. I founded Advance Trade Settlement, LLC on July 20th, 2007.
4. Prior to my involvement with ATS, I worked as a computer consultant specializing in customizing business management software for existing business operations, including law firms such as Plaintiff Esbin & Alter, LLP, Sabharwal, Globus and Linn LLP, Mandel, Katz, Manna and Brosnan LLP and Kieselstein & Lee LLP. Around January 2004, while working for RAD Technologies, I was retained as a consultant to customize the Matters program, a client-management software developed by RAD Technologies, Inc., to better suit the needs of Plaintiff Esbin & Alter.

5. The Matters program is an independent program that has been utilized by numerous other businesses including at least three other law firms.
6. As a computer consultant, I have customized the Matters program for at least four of my clients. The clients include the law firms mentioned above in Paragraph No. 4.
7. The product that I create for each client is specifically tailored to the way each client organizes its business files and operates its business.
8. As such, Esbin & Alter does not own any of the rights to the Matters program itself. In fact, the way in which the program has been customized for use by Esbin & Alter would not be of utility to any other entity.
9. This understanding is reflected in the express language of the consultant agreement between myself and Esbin & Alter, attached hereto as Exhibit A.
10. I single-handedly and independently developed the ATS software at issue based on my knowledge of computer software programming and a general understanding of the debt-settlement industry's needs.
11. I did not develop the ATS software while working at Esbin & Alter.
12. I did not use Esbin & Alter's version of the Matters program or any of their resources in developing the ATS software, including any confidential information.
13. I created the source code for the ATS software entirely from scratch.
14. I did not borrow from either the Matters program or the Works program in designing and developing the ATS software.
15. I have been attempting to market the ATS software since, August 20th, 2007, but have not yet generated any business based on the software.
16. To my knowledge, however, Plaintiff Esbin & Alter has been talking to the

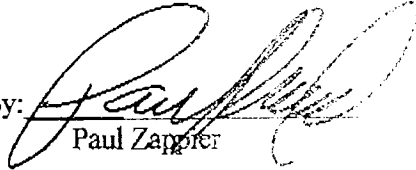
prospective clients for ATS, stating among other things that they own the rights to
ATS software.

17. For instance, JP Morgan, a prospective client, communicated that they would not
further pursue business with ATS regarding its software. Upon information and
belief, they made this decision because of what they were told by Esbin & Alter.


18. Esbin & Alter's conduct has caused damage to ATS' business prospects and
reputation, creating a cause of action that I wish to pursue in this case.

Dated: February 4, 2008
New York, New York

By:


Paul Zappor

Sworn to before me this
04th day of February, 2008


Notary Public

CANDACE A. BEHENSKY
Notary Public, State of New York
No. 01BE6025493
Qualified in Orange County
Commission Expires May 24, 2011